

**REMARKS/ARGUMENTS**

The Office Action mailed April 21, 2008, has been received and reviewed. Claims 1-3, 7-10, 13, 20-25 and 41 are currently pending in the application. Claims 1-3, 7-10, 13, 20-25 and 41 stand rejected. Applicants respectfully request reconsideration of the application in view of the arguments and remarks set forth hereinbelow.

**35 U.S.C. § 102(b) Anticipation Rejections**

**Anticipation Rejection Based on AEC (New structure Phase I report)**

Claims 1-3, 7-10, 13, 20-25 and 41 stand rejected under 35 U.S.C. § 102(b) as being anticipated by AEC (New structure Phase I report). Applicants respectfully traverse this rejection, as hereinafter set forth.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Brothers v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

The Examiner relies on the AEC reference under 35 U.S.C. §102(b) asserting that it dates back to March of 1994. Applicants assume that the Examiner is relying on the footer of the AEC reference which states: "Proprietary – SBIR Rights Notice (Mar 1994)."

Applicants note that the notice at the footer of the AEC reference is not a notice of publication or an indication of the public availability of the AEC reference at any specified time. Rather, under SBIR (Small Business Innovation Research) procedures, in order to maintain certain rights in an invention, a "proprietary rights statement" must be placed on the document being submitted for consideration. The particular wording of the proprietary rights statement is specified by the Federal Acquisition Regulations (FAR). In this particular case, a full proprietary rights statement is set forth on the title page of the AEC reference (the paragraph at the bottom starting with the sentence "These SBIR data are furnished with SBIR rights under Contract No. NAS5-03055."). In addition, a shorthand version of the SBIR rights notice was placed at the footer of the remaining pages of the document stating "Proprietary – SBIR Rights Notice (Mar 1994)." The inclusion of the "(Mar 1994)" is not an indication of a date of the document

(production, publication or otherwise), but is simply a reference to the *version* of the SBIR proprietary rights notice being asserted (i.e., the proprietary rights notice of March 1994). By way of information, Applicants note that the current version of the SBIR proprietary rights notice, as set forth in FAR 52.228-20(d), is a “Dec 2007” version.

As further evidence that the AEC reference was not available as of March 1994, the title page of the document notes that it is an “Initial Release” (stated in the “Revision” box near the lower right hand side of the title page), and that the “Revision Date” is 14 June 2003. Likewise, the “Report Documentation Page” at the very end of the document (Standard Form 298) sets forth a “Report Date” of 7/14/2003.

Moreover, Applicants submit that the “Report Date” and the “Revision Date” do not necessarily establish a date on which the AEC reference was publicly available.

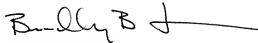
Applicants, therefore, submit that AEC is not available as a § 102(b) type reference as the document was not publicly available more than a year prior to the filing of the present application.

Applicants, therefore, respectfully request reconsideration and allowance of claims 1-3, 7-10, 13, 20-25 and 41.

**CONCLUSION**

Claims 1-3, 7-10, 13, 20-25 and 41 are believed to be in condition for allowance, and an early notice thereof is respectfully solicited. Should the Examiner determine that additional issues remain which might be resolved by a telephone conference, the Examiner is respectfully invited to contact Applicants' undersigned attorney.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "B. B. Jensen", followed by a long horizontal flourish.

Bradley B. Jensen  
Registration No. 46,801  
Attorney for Applicants  
TRASKBRITT  
P.O. Box 2550  
Salt Lake City, Utah 84110-2550  
Telephone: 801-532-1922  
Fax: 801-531-9168

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